

CBPO DRAFT GRANDFATHERING POLICY  
**SECOND** WORKING PAPER - (032410-PC draft)

Revisions Per Building and Development Staff initial comments only  
**(WORKING DRAFT ONLY-NO RECOMMENDATION INTENDED)**

Draft Transition Rules:

(a) Any Plan of Development, as defined in the Chesapeake Bay Preservation Ordinance (“CBPO”), which has been approved, or has obtained issuance of a permit, or has been officially accepted by the County and has not become an Inactive Application (as defined in the Zoning Ordinance or the Land Subdivision and Development Ordinance (“LSDO”)), has not been withdrawn, has not received a final decision, and has not expired or otherwise become void or invalid as of the effective date (“Effective Date”) of the CBPO and which does not fully comply with the CBPO and the associated provisions of the Zoning Ordinance (“ZO”), LSDO, Erosion and Sediment Control Ordinance (“ESCO”), and the Facilities Standards Manual (“FSM”) because of actual or proposed encroachments into the Resource Protection Area (“RPA”) will not be required to obtain approval of an Exception under the CBPO in order to have development completed in accordance with such Plan of Development, provided that an RPA delineation is performed per the CBPO and these Transition Rules are otherwise complied with. In the administration of the CBPO and associated provisions of the ZO, LSDO, ESCO and FSM (all such ordinances hereinafter collectively referred to as the “Ordinance”), such Plans of Development shall be treated in accordance with the following Transition Rules.

(b) Construction may proceed for all work shown on any such overlot grading plan or erosion and sediment control plan (herein collectively referred to as “Grading Plan”) for which a permit was issued prior to the Effective Date without further action by the permittee provided the associated Building Permit is issued within six (6) months of the Effective Date. Revisions to such plans may be approved provided that such revisions do not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA.

(c) Construction may proceed for any structure for which a Building Permit was issued prior to the Effective Date without further action by the permittee provided the structure is constructed in accordance with the Building Permit. New Building Permits for replacement house types may be issued or minor revisions to building footprints for previously issued Building Permits may be approved provided that such new permits or revisions do not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA.

(d) For the purposes of the following Transition Rules, “Pending Plan” shall mean any Plan of Development, as defined in the CBPO, which, as of the Effective Date, (i) has been officially accepted by the County and has not become an Inactive Application (as defined in the Zoning Ordinance or the Land Subdivision and Development Ordinance (“LSDO”)), and (ii) has not been withdrawn, and (iii) has not received a final decision, and (iv) has not expired or otherwise become void or invalid pursuant to applicable law, and (v) has been since the date of its official acceptance and continues to be diligently pursued.

(e) For the purposes of these Transition Rules, “diligently pursued” shall mean:

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(i) If corrections to a Pending Plan are or have been deemed necessary by the reviewing authority, a plan or application containing the requested revisions shall be or shall have been resubmitted within the timeframe for the particular type of plan or application as follows:

(A) Grading Plans, subdivision waiver plats, and record plats ..... Sixty (60) days

(B) Construction plans and profiles, conceptual development plans, rezoning plats, special exception plats, preliminary plats of subdivision, preliminary/record subdivision plats, family subdivision plats, AR-1 and AR-2 division plats, site plans (including site plan amendments and site plan revisions) ..... Six (6) Months

Resubmission of such filed plans may be approved so long as revisions to such plans do not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA.

(ii) If applicable, all required executed performance agreements and sureties, deposits, easements and fees shall be submitted within six (6) months of the date of the approval letter for construction plans and profiles and site plans or within twelve (12) months of the Effective Date, whichever is later.

(iii) Grading Permits pursuant to approved construction plans and profiles and Building Permits pursuant to approved record plats must be submitted and diligently pursued within two (2) years after recordation of the record plat.

(iv) The above time limitations may be extended only by the [Board of Supervisors][Loudoun County Chesapeake Bay Review Board] and only when the developer can demonstrate that the said timeframes cannot be met due to the acts or omissions of Loudoun County or the Commonwealth of Virginia beyond developer's control. Such extensions may be considered only when the developer, prior to the expiration of the time limitation, notifies the CBPO Administrator in writing of the acts or omissions causing developer's inability to meet such time limitations.

(f) As determined by the Administrator, all Plans of Development that qualify as approved plans or Pending Plans, except for approved Grading Plans and Building Permits referenced in paragraphs (b) and (c) above, shall comply with the provisions of the Ordinance as follows:

(i) All development shall comply with the provisions of the ~~Ordinance-CBPO~~ to the greatest extent possible, provided such compliance would not result in a reduction of density, ~~or reduction of floor area ratio ("FAR"), or the relocation of principal structures or facilities other than parking facilities as shown on the Pending Plan.~~

(ii) Where possible, a vegetated area subject to recorded easement equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or

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parcel in such a way as to maximize water quality protection and mitigate the effects of the buffer encroachment.

- (iii) All Pending Plans shall be revised to show the RPA boundary in accordance with any RPA delineation required in paragraph (a) above ~~the requirements of the Ordinance~~—regardless of whether an encroachment into the RPA has been authorized by an exception under the Ordinance or by application of sub-paragraph (f)(i) above.
- (iv) All Pending Plans shall be revised to include one of the following statements in a form as approved by the Director: (A) a statement that the plan complies fully with the Ordinance; or (B) a statement that the plan qualifies as a Pending Plan under this Transition Rule, stating the basis for such determination, identifying any conflicts with the Ordinance, and stating how the requirements of (f)(i) and (ii) above have been met.

Working Draft Only - No recommendation intended